

Reaction to Draft Proposal from India on the Proposed Amendments to the ITU's ITR's - November 3, 2012

Reaction to Draft Proposal from India based on final draft ITR document of ITU

Reference ITU draft ITRs (annexure A)	Addition – A Modification - M	Content / gist of content (with Civil Society's formulations)
Article 1 - para 3A	A	<p>These regulations recognize that Member states shall take reasonable measures to prevent, to the greatest extent possible, measures to prevent interruption of services and should adopt international best practices to attempt to ensure no harm is caused by their operating agencies to other operating agencies of other countries that is sufficient to impair effective functioning of the operating agencies of other countries. (CWG/4/12)</p> <p><u>NOTE:</u></p> <p>We have watered down the provisions to ensure that (a) all possible harm is not included and there is a fairly high standard of damage needed to be caused, (b) that states are limited to taking best efforts / reasonable measures to prevent practices that could interrupt network functionality. This would not impose a single mandatory standard on States to adhere to (while at the same time attempting to lay down certain minimum standards).</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
Article 1 – Para 3B	A	<p>Priority for safety of life telecommunications(CWG/4/14)</p> <p><i>SUPPORT</i></p>

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<p>Article 2 – Para 14 A</p>	<p>A</p>	<p><i>Telecommunication/ICT</i>: Any transmission, emission or reception, of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.</p> <p><u>NOTE:</u></p> <p>To our understanding, ‘ICT’ is already covered within the scope of the term ‘Telecommunication’ and being there explicitly or not makes no difference to scope / powers of the ITU. In our opinion this definition already includes the internet. For instance, the ITU already lays down standards / makes comments in the internet arena. Examples are the series of Internet Reports released by the ITU since 1997 (“The Portable Internet”), Resolution 101 of the ITU Plenipotentiary Conference (Minneapolis, 1998; updated Marrakesh 2002), which calls upon ITU to "fully embrace the opportunities for telecommunication development that arise from the growth of IP-based services" etc.</p> <p>The debate appears to arise because of the different legal obligations of telecommunications and information service providers in the United States of America.</p> <p>It may be noted that the term ‘Telecommunication’ is also defined in the basic texts of the ITU and hence any amendment to the definition in the ITR's may require parallel amendment of the relevant Articles in the Convention / Constitution of the ITU.</p> <p>In view of the above and keeping in mind Article 1(d) of the ITU Convention as well as Principle B(11)(64) of the “Declaration of Principles” of the World Summit on the Information Society (Document WSIS-03/GENEVA/DOC/4-E, while we believe that a particular portion of the internet architecture is already under the ITU mandate, care must be taken that this mandate is not extended. In this context, it is crucial that the term “processing” be excluded from the definition as this clearly opens up the possibility for the ITU to regulate / attempt to regulate the “content” / “application” layer on the internet.</p> <p><i>DO NOT SUPPORT</i></p>
<p>Article 2</p>	<p>A</p>	<p>Definitions for Transit rate, Spam, Hubbing, Network</p>

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		<p>Fraud, Global Telecommunications Service, Originating identification, stability of the International Telecommunication network, Security of the International Telecommunication Network, International Roaming, IP interconnection, End to end quality of service delivery and best effort delivery.</p> <p><u>NOTE</u> (Delhi Science Forum, Free Software Movement of India and the Society for Knowledge Commons support this position, Centre for Internet Studies and Internet Democracy Project do not):</p> <p>Definition for IP Interconnection and Best Effort Delivery must be included as these would ensure that the ITU can regulate (by laying down minimum standards / encouraging the adoption of best practices) physical transmission / network operation and functioning even in the case of the internet. Further, as IP Interconnections, in our opinion, are already included within the mandate of the ITU – it may be preferable to clarify the import of these terms.</p> <p>Spam deals with content and should not therefore be discussed at the ITU level. Separately, issues such as network fraud, stability of international telecommunications, security of communications can be introduced as required on a needs basis in individual recommendations but we do not believe a Treaty is an appropriate place to regulate these issues or address concerns in these areas. These are terms that are ambiguous in meaning and as such it may be appropriate not to artificially restrict the scope of the terms in a treaty. Important to note that this rejection of the definitions provided does not <i>ipso facto</i> mean that the ITU will not have mandate over these issues.</p> <p>Quality of Service must be included as the concept is used later in the ITRs – we suggest ensuring that the definition is only applicable to QoS with respect to traditional telephony services and not the internet. This must be clarified in the definition (Which must be amended accordingly). If applied to the internet it may lead to net neutrality issues (as it may open up the possibility of differential QoS being permitted in the internet sphere).</p>
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		<p>We suggest deletion of hubbing, spam, Security of the International Telecommunication Network and Network Fraud – these terms involve the content / application layer of the internet. Hubbing does not appear to have been used in the any of the proposals and as such there is lack of clarity on why such a definition is required. In any event, we believe that routing and such issues should be kept out of the mandate of the ITU.</p> <p>We do not see any problems with the introduction of definitions of Global Telecommunications Service, International Roaming, Stability of the International Telecommunication Network, and IP Interconnections. These are however on the basis that the suggested modifications to paragraph 38D are carried through (viz. Access to the internet must be provided).</p> <p>Definitions of Transit Rate, Originating Identification and End to End QoS must be restricted to the telephony sphere and must not touch the internet. End to End QoS is extremely difficult to determine in the context of the internet and we believe it is best if the ITRs restrict themselves to a 'best effort standard'.</p> <p><i>SUPPORT ONLY WITH MODIFICATIONS MENTIONED ABOVE</i></p>
<p>Article 3 – Para 31 A</p>	<p>A</p>	<p>Member States shall ensure that international naming, numbering, addressing and identification resources are used only by the assignees and only for the purposes for which they were assigned; and that unassigned resources are not used. The provisions of the relevant ITU-T Recommendations shall be applied. (CWG/4/134)</p> <p><i>WE SUGGEST THAT THIS PROVISION BE RESTRICTED TO CONVENTIONAL TELEPHONY AND NOT TO INTERNET ADDRESSES ETC.</i></p>
<p>Article 3 Para 31 B</p>	<p>A</p>	<p>International calling party number delivery shall be provided [taking into account in accordance with] relevant ITU-T Recommendations.(CWG/4/142)</p> <p><u>NOTE:</u> The term International Calling Part number must be restricted to only traditional telephony and should not include IP Addresses (essentially this proposal should not apply to the internet). In any event, privacy concerns must be adequately addressed (even in respect of traditional</p>

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		<p>telephony) and therefore some of the other proposals (such as CWG/4/146, 144 etc) may be considered.</p> <p><i>SUGGEST DO NOT SUPPORT IN PRESENT FORM</i></p>
<p>Article 3 Para 31 D</p>	<p>A</p>	<p>The public having access to the international network shall have the right to transmit traffic.CWG/4/157</p> <p><i>SUPPORT</i></p>
<p>Article 4 Para 34</p>	<p>M</p>	<p>Subject to National law, Members States shall endeavour to ensure that recognized operating agencies provide and maintain, to the greatest extent practicable, a satisfactory quality of service corresponding to the relevant ITU-T Recommendations with respect to; (CWG/4/168)</p> <p><u>NOTE:</u> We support the provision with the suggested modifications of (addition of “recognised”). Given the broad definition of “Operating Agency” it may be impossible and we believe it is undesirable for the ITU to regulate this sphere.</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
<p>Article 4 Para 38 A</p>	<p>A</p>	<p>Member States should ensure that recognized operating agencies providing international telecommunication services, including roaming, make available to subscribers information on tariffs, including duties and fiscal taxes. Each subscriber should be able to have access to such information and receive it in a timely manner and free of charge when roaming (entering into roaming), except where the subscriber has previously declined to receive such information CWG/4/188)</p> <p><u>NOTE:</u> As the ITRs are largely recommendatory / by way of guideline and do not (in general) lay down binding mandatory provisions we believe it is more appropriate to use the term “should” as opposed to shall where obligations are being cast on members states / operating agencies etc. This is particularly so in cases where standard setting may be done by numerous global bodies, where it may not be possible to have a single global standard etc.</p> <p><i>WE SUPPORT THE PROVISION WITH THE SUGGESTED MODIFICATIONS</i></p>

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<p>Article 4 Para 38 B</p>	<p>A</p>	<p>Global Telecommunication Service: Given the particular characteristics of GTS, which allows subscribers to have a worldwide number, national legislation may allow and implement GTSs in such a way that GTSs are considered as local communication services in the applicable jurisdiction, subject to clearance from security angle. CWG/4/195</p> <p><i>SUPPORT</i></p>
<p>Article 4 Para 38 D</p>	<p>A</p>	<p>Recognised Operating agencies shall cooperate in the development of international IP interconnections by providing, best effort delivery. Best effort delivery should continue to form the basis of international IP traffic exchange. Operating Agencies shall not enter into commercial agreements with differentiated quality of service delivery to develop (CWG/4/199)</p> <p><i>NOTE (Delhi Science Forum, the Society for Knowledge Commons, and Free Software Movement of India support this position. Centre for Internet Studies and Internet Democracy Project do not):</i></p> <p>We believe it is essential for equitable internet growth and access, (in particular in the context of developing countries and remote areas) that a positive mandate be created through an international body with enforcement powers such as the ITU to regulate IP interconnection (much as telephone networks are also regulated by the ITU). At the same time, there must be no differentiation in QoS based on commercial considerations. Any such agreements are likely to adversely affect the availability of content to users. Such a provision is a significant threat to the principle of network neutrality.</p> <p><i>SUGGEST SUPPORTING THIS PROVISION WITH MODIFICATIONS</i></p>
<p>Article 4 Para 38 E</p>	<p>A</p>	<p>Member States shall foster the establishment of mutual agreements on mobile services accessed within a predetermined border zone in order to prevent or mitigate inadvertent roaming charges.(CWG/4/201)</p> <p>(Note: Though there is a concern on infringement of mobile signals into Indian boarder areas from neighbours mobile service providers leading to security issues, India may consider this clause as ITRs are global in nature and</p>

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		<p>the clause is of promoting or encouraging in nature)</p> <p><i>SUPPORT</i></p>
Article 5 Para 39	M	<p>Safety of life telecommunications, including distress telecommunications, emergency telecommunication services and telecommunications for disaster relief, shall be entitled to transmission as of right and shall, where technically practicable, have absolute priority over all other telecommunications, in accordance with the relevant Articles of the Constitution and Convention and in accordance with relevant ITU-T Resolutions and Recommendations.CWG/4/204</p> <p><i>SUPPORT</i></p>
Article 5 Para 41 B	A	<p>Member States should cooperate to introduce in addition to their existing national emergency numbers a global number for calls to the emergency services globally (CWA/4/217)</p> <p><i>SUPPORT</i></p>
Article 5 Para 41 C	A	<p>Member States shall [ensure that recognised operating agencies] provide all users including every roaming user access to emergency services, free of charge.. (CWG/4/219)</p> <p>NOTE:</p> <p>We are of the opinion that such a provision must be included as it would ensure that even roaming users are allowed to utilise local emergency services in times of distress (rather than just providing them information about such services).</p> <p><i>SUPPORT WITH MODIFICATION</i></p>
New Article 5 A, 5 B Para 41 D	A	<p>Network Security and Cyber Security issues.</p> <p><u>NOTE:</u> We do not believe that the issues of cyber security and cyber attacks should be included in the scope of the ITR's (other than the general obligations imposed under (proposed) Article 1). We recognise that concerns regarding cyber-security, spam, fraud, etc. are real and that some of these concerns require to be addressed at the global level. However, we believe that as a number of parallel processes are working on these specific issues, these need not be brought under the ITR's.</p>

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		<p>As far as the suggested amendments are concerned (proposal for Article 5A), we are of the opinion that:</p> <ul style="list-style-type: none"> (i) Paragraph (a) be deleted as it is covered adequately under the proposed Article 1 and paragraph (d) of the proposed Article. (ii) Paragraph (b) is deleted as it is covered in the proposed Article 1. (iii) Paragraph (c) be amended to exclude references to the content and logic layers of the internet. The provision could read “c. Issues related to the security of telecommunications networks, that is, the physical and operational security of networks.” (iv) Paragraph (d) should be amended to read: “d. User information in telecommunication network should be respected and protected. Member-states have the responsibility to oversee that recognised operation agencies operating in their territory protect the security of user information.” Protecting user information in the context of telecommunication is desirable. The language has been modified to ensure that it is not broad enough to extend to content on the Internet. (v) Paragraph (e) should be amended to read “Member states should cooperate to harmonize national laws and practices in the area of network security and functionality.” The deletions are as we believe that the terms suggested would expand the mandate of the ITU to non-transport layers of the Internet. (vi) Paragraph (f) should be deleted as it is covered under proposed Article 1. <p><i>WE SUGGEST SUPPORTING THIS PROVISION WITH THE MODIFICATIONS MENTIONED.</i></p>
<p>Reference ITU draft ITRs (annexure A)</p>	<p>Addition – A Modification - M</p>	<p>Content / gist of content</p>

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<p>Article 6 Para 43 A</p>	<p>A</p>	<p>Member States should encourage competition in the international roaming market; Member States are encouraged to cooperate to develop policies for reducing charges on international roaming services. (CWG/4/243)</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
<p>Article 6 Para 45</p>	<p>M</p>	<p>Countries are free to levy fiscal taxes on international telecommunication services in accordance with their national laws, but international double taxation must be avoided. (CWG/4/249)</p> <p><i>SUPPORT</i></p>
<p>Article 6 Para 54 B</p>	<p>A</p>	<p>Member States shall ensure that each party in a negotiation or agreement related to or arising out of international connectivity matters, will have access to alternative dispute resolution mechanisms and will have standing to have recourse to the relevant regulatory or competition authorities of the other party's country. (CWG/4/280)</p> <p><u>NOTE:</u> Ensuring that dispute resolution mechanisms are in place would not derogate from another bodies power to regulate a dispute (be it a court or an ADR forum). This provision merely implies that the ITU will ensure that these mechanisms are available and mentioned in the contract between companies. We do not believe this gives the ITU the power to become a dispute resolution body – just says that it will ensure there is access to the same. The deletion of the term “including those for the Internet” does not <i>ipso facto</i> exclude connectivity agreements pertaining to the internet from being examined by the ITU.</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
<p>Article 6 Para 54 E</p>	<p>A</p>	<p>Subject to national law, members shall ensure that administrations collaborate in preventing and controlling fraud in international telecommunications by:</p> <ul style="list-style-type: none"> – Identifying and transmitting to the transit and destination administrations and operators the pertinent information required for the purposes of payment for the routing of international traffic, in particular the originating Country Code, National Destination Code

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		<p>(CWG/4/287)</p> <p>We believe that it is appropriate to restrict this provision only to traditional telephony. The two deleted provisions (“following up...”) are removed as we believe such matters are best dealt with on a bilateral basis between countries, possibly on the basis of an MLAT.</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
Article 6 Para 54 F	A	<p>We do not believe ITU should not get into areas traditionally part of criminal law and already dealt with by various organisations around the world. Fraud is dealt with by a number of different institutional arrangements even at the international level and there is no pressing need for extension of the ITU mandate into this field.</p> <p><i>DO NOT SUPPORT</i></p>
Article 6 Para 54 H	A	<p><i>DO NOT SUPPORT</i></p>
Article 6 Para 54 J	A	<p>Member States should promote transparency with respect to retail and wholesale prices/costs, and quality of service. (CWG/4/297)</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
Article 6 Para 54 K	A	<p>Member States should foster continued investment in high-bandwidth infrastructures. (CWG/4/299)</p> <p><i>SUPPORT</i></p>
Article 6 Para 54 L	A	<p>From a developing world perspective, we are concerned about cross-subsidies, imposition of USO (or similar) obligations etc. and therefore believe the suggested provision should not be included as these issues are not necessarily in consonance with the principle</p>

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		<p>of cost based pricing.</p> <p><i>DO NOT SUPPORT</i> – we believe these are issues best left to national legislation and regulation.</p>
Article 6 Para 54 N	A	<p>Members States should ensure transparency of end-user prices, in particular to avoid surprising bills for international services (e.g. mobile roaming and data roaming). (CWG/4/305)</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
Article 6 Para 54 P	A	<p>Member States should consider measures to favour special interconnection rates for landlocked countries. (CWG/4/307)</p> <p>Member States should ensure that operators establish charging units and parameters that bill telecommunication service consumers according to what is effectively consumed.(CWG/4/309)</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
Article 6 Para 54 R	A	<p>The settlement of international accounts shall be regarded as current transactions and shall be effected in accordance with the current international obligations of the Member States and Sector Members concerned in those cases where their governments have concluded arrangements on this subject. Where no such arrangements have been concluded, and in the absence of special agreements made under Article 42 of the Constitution, these settlements shall be effected in accordance with the Administrative Regulations.</p> <p>6.20.2 Administrations of Member States and Sector Members which operate international telecommunication services shall come to an agreement with regard to the amount of their debits and credits.</p> <p>6.20.3 The statement of accounts with respect to debits and credits referred to in No. 498 above shall be drawn up in accordance with the provisions of the Administrative Regulations, unless special arrangements have been concluded between the parties concerned. (CWG/4/313)</p>

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		<p><u>NOTE:</u> This clause is a repetition of Article 37 of the ITU Convention titled Rendering and Settlement of Accounts. We do not see any pressing need for its inclusion in the ITR's.</p> <p><i>SUGGEST NOT SUPPORTING</i></p>
<p>Article 6 Para 54 T</p>	<p>A</p>	<p>Accounting, transit and termination rates: For each applicable service in a given relation, [administrations]* or Recognized Operating Agencies should by mutual agreement, establish and revise accounting, transit and termination rates to be applied between them, in accordance with the provisions of Appendix 1 and taking into account relevant ITU-T Recommendations and relevant cost trends.</p> <p>Member States should ensure that each party in a negotiation or agreement related to or arising out of international connectivity matters, will have access to alternative dispute resolution mechanisms and will have standing to have recourse to the relevant regulatory or competition authorities of the other party's state, [this dispute resolution mechanism may also be by a body mutually agreeable to the parties of the dispute (a neutral body in one of the concerned countries or by a neutral international body, or as agreed by the concerned parties).] (CWG/4/318)</p> <p><u>NOTE:</u> We do not believe it is in India's interests to support cost based pricing. This is likely to directly impact the ability of the state to subsidise or regulate telecommunications services and charges and may lead to increase in costs to the consumer.</p> <p><i>SUPPORT WITH MODIFICATIONS</i></p>
<p>Article 10 Para 61 A</p>	<p>A</p>	<p>These Regulations, [of which Appendices 1, 2, and 3 form integral parts and] which complement the provisions of the Constitution and Convention of the International Telecommunication Union, shall enter into force on 1 January 2015 and shall be applied as of that date pursuant to Article 54 of the Constitution. (CWG/4/345)</p> <p><i>SUPPORT</i></p>

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		<p>“Member’ is substituted by ‘Member State’ appropriately in the draft document</p> <p><i>SUPPORT</i></p>